IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1629 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B L DEVE

Versus

DY.DIRECTOR

Appearance:

1. Special Civil Application No. 1629 of 1989

MR KIRTIDEV R DAVE for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/04/2004

ORAL JUDGEMENT

1. In this petition the petitioner has prayed for expunction of the adverse remarks that have

been made in the A.C.R. maintained for the period between 1st June, 1986 and 31st March 1987.

2. The petitioner joined the service of the respondent as Principal, Employment Training Department as Class-II Officer with effect from 20th August, 1982. Initially he was appointed on probation but after completion of satisfactory service he was absorbed in the service on regular basis. He was allowed to cross the efficiency bar vide order dated 1st February, 1988. In the meanwhile for the aforesaid period the petitioner's superior officer made certain adverse remarks which have been communicated to the petitioner on 10th August, 1987. Copy of the remarks has been annexed to the petition at Annexure-A. It is dated 10th August, 1987. By said letter the petitioner has been informed that on the whole his ability in the matter of expression in writing was satisfactory but some times he had a tendency to twist the issue, secondly that he had poor capacity to take work from his subordinate officer, thirdly that he was in the habit of flouting the instructions given by the higher officer and lastly it was observed that his overall assessment showed that he was not obeying the instructions given by the higher officers. It was also informed to him that he could, if he so wished, make representation against adverse remarks within six weeks from the date of communication.

2.1. In view of the adverse remarks that were made against him, the petitioner made a detailed representation dated 20th September, 1987 i.e. within stipulated time. However, the said representation was decided on 8th February, 1989.

2.2. The petitioner has made a grievance that he was never informed about the adverse remarks before entering them in the A.C.R. by his superior officer. Further that the respondents had failed to comply with the time limit prescribed for the purpose of communication of the adverse remarks as well as deciding the representation, contained in circular dated 20th January, 1972. According to him there Government directions that as far as possible communication of the adverse remarks should be made within six weeks from the completion of the confidential report for a particular financial year. In the present case, admittedly it is not done within that time. The respondents have even not assigned any reasons in the affidavit-in-reply why they have failed to adhere to the time limit prescribed under the circular. Secondly so far the representation made against the adverse remarks is concerned, decision

thereon has to be taken within a period of three months from the date of submission of the representation. This time limit is also prescribed vide the said circular. Admittedly in the instant case it has been done after more than one year. No plausible explanation with regard to delay has been submitted in the affidavit-in-reply.

3. In the decision rendered in the case of C.N. Chavda v. Director General of Police, Gujarat State reported in 1992 (1) G.L.H. p. 209 this Court [Coram : C.K. Thakkar, J. as he then was] has observed that strict compliance with the time limit prescribed by the circular has to be made, failing which the adverse remarks will be rendered ineffective and they cannot be taken into consideration for any purpose. Relying on the said decision, I have also taken similar view in the decision rendered in the case of K.R. Jadav v. Director General & Inspector General of Police in Special Civil Application No. 7580 of 1992 on 13/01/2004.

4. It also appears that before entering the adverse remarks in the A.C.R. no intimation has been given to the petitioner so as to enable him to have a chance to improve his performance. The Apex Court in the decision rendered in the case of Lakhiram v. State of Haryana reported in 1982 (1) S.L.R. P. 650 has laid down as under :-

> ".... The High Court took the view that the appellant was not entitled to complain against the expungement of adverse remarks made in the confidential report of another officer.
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> 2. But this view is, in our opinion, erroneous because the effect of expungement of adverse remarks in the confidential report of respondent No. 6 is to prejudice the chances of promotion of the appellant and if the appellant is able to show that the expungement of the remarks was illegal and invalid, the adverse remarks would continue to remain in the confidential report of respondent No. 6 and that would improve the chances of promotion of the appellant vis-a-vis respondent No. 6. The appellant was, therefore, clearly entitled to show that the Government acted beyond the scope of its power in expunging the adverse remarks in the confidential report of respondent No. 6 and that the expungement of the adverse remarks should be cancelled. The appellant had, in the circumstances, locus standi to maintain the writ

petition, and the High Court was in error in rejecting it on the ground that the appellant was not entitled to maintain the writ petition."

5. In view of the aforesaid, it is obvious that the requisite requirements have not been complied with by the respondents. Mr. Dave, learned advocate appearing for the petitioner has also placed reliance on the other decisions which are in respect of the justification for making the adverse remarks. However, that is not the question to be considered by me in a petition under Article 226 of the Constitution of India.

5.1. So far Mr. P.D. Bhate, Ld. AGP for the respondents is concerned, he has tried to submit that looking to the performance of the petitioner, the respondents were justified in making adverse remarks in his A.C.R. However, he has not been able to explain why such long delay has been caused in communication of the adverse remarks as well as to take decision on the representation made by the petitioner. He has further tried to rely on a fact that subsequently the petitioner has already been convicted in a Criminal Case under the Prevention of Corruption Act. However, that has nothing to do with the facts of the present case, since the relief is sought for expungement of the remarks which have been made for the financial year 1986-87. In view of the aforesaid decisions and also in view of the admitted fact that the requirements of the circular have not been observed, these remarks are required to be expunged.

6. In the result, this petition is allowed. The adverse remarks contained in Annexure-A are ordered to be expunged and they are to be treated as nonexistent. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.